

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000115-001 DT

04/26/2006

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 04/28/2006

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

SURJIT SINGH (001)

SURJIT SINGH
6812 W ROMA AVE
PHOENIX AZ 85033

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

LOWER COURT REVERSED / REMAND

Lower Court Case No. PR200535606

The Superior Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On July, 21, 2005, a photo radar installment photographed a vehicle owned by Appellant Surjit Singh traveling at a speed of 52 mph in a zone marked 40 mph, in violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). A copy of the Complaint and Summons was mailed to Appellant, but Appellant failed to appear in Scottsdale City Court. Thereafter, personal service was attempted, with the process server delivering the documents to Appellant's father. Appellant did not appear for the new court date on November 3, 2005. A default judgment was entered against him. Appellant thereafter moved to set aside the default, but his motion was denied. Appellant filed a timely notice of appeal on November 14, 2005.

Rule 23, Rules of Procedure in Civil Traffic Violation Cases, provides:

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Rule 23. Setting Aside Default Judgment

Upon written motion, for good cause or any other reason necessary to prevent a manifest injustice, the court may set aside a judgment entered upon a failure to appear.

As he did in the court below, Appellant contends that he was not the driver of the vehicle in question. The State concedes as much, stating in its appellate memorandum: “After viewing the photograph of the driver in the citation to the attached government identification photograph of the Defendant, the State concedes that they are not the same person.”¹ Under these rather unique circumstances, it would be manifestly unjust to keep the default judgment in place.

IT IS ORDERED reversing the decision of the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with instructions to vacate the default judgment entered against Appellant.

¹ Appellee’s Brief, p. 2, ll. 13-15.
Docket Code 512